

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

ORIGINAL

77-6164
77-6165

To be argued by
JAMES P. GRIFFIN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Docket Nos. 77-6164, 77-6165

ANNA SELMA VINJE MORPURGO,

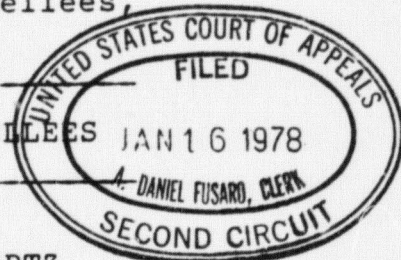
Plaintiff-Appellant,

-against-

BOARD OF HIGHER EDUCATION OF THE
CITY OF NEW YORK, et al.,

Defendants-Appellees,

BRIEF FOR MUNICIPAL DEFENDANTS-APPELLEES



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OF NEW YORK, et al.,

Defendants-Appellees.

BRIEF FOR MUNICIPAL DEFENDANTS-APPELLEES

Preliminary Statement

Plaintiff-appellant, Anna Selma Vinje Morpurgo, appearing pro se, appeals from a judgment entered in the United States District Court for the Southern District on New York on August 2 1977. The judgment is predicated upon two opinions of the Honorable Edward Weinfeld, District Judge filed November 18, 1976 and July 27, 1977 respectively. This brief is submitted on behalf of defendants-appellees, Board of Higher Education, its employees and City University of New York employees (the "municipal defendants"). In his opinion, dated November 18 1976, Judge Weinfeld dismissed plaintiff's complaints for failure to state a claim insofar as they sought to charge the municipal defendants with violations of Title VII of the Civil Rights Act, 42 U.S.C. §1983, and 42 U.S.C. §1985(3). See 423 F. Supp. 704. In his opinion, dated July 27, 1977, which has not yet been

reported, Judge Weinfeld granted summary judgment in favor of the municipal defendants on plaintiff's due process claims which had survived the motion to dismiss.

Questions Presented

1. Did the District Court properly dismiss plaintiff's claims under Title VII of the Civil Rights Act, 42 U.S.C. §1983, and 42 U.S.C. §1985(3) against the municipal defendants for failure to state a claim upon which relief could be granted?

2. Did the District Court properly grant summary judgment to the municipal defendants on plaintiff's due process claims?

STATEMENT OF THE CASE

Appellant was formerly employed by the New York City Board of Higher Education ("BHE") as an adjunct lecturer at Queensboro Community College ("QCC"), a division of the City University of New York, and was enrolled in a doctoral program at the City University of New York ("CUNY").

Appearing pro se, Ms. Morpurgo commenced three separate actions under the Civil Rights Act* against various agencies and individuals, charging a multiplicity of wrongful acts and conduct originating, for the most part, with CUNY's termination of her studies leading to a doctorate degree and its refusal to renew her contract as an adjunct lecturer.

*It is not clear from her complaints what provisions of law plaintiff relied upon.

As Ms. Morpurgo sought and was refused admission to various other universities and research programs, her charges broadened to include many other defendants whom, she alleged, had organized and led a conspiracy against her. See 423 F. Supp. at 707

In her first action, 75 Civil 186, plaintiff claimed that BHE had denied her equal rights to participate in various higher educational programs and to share in educational programs and educational grants. As part of this alleged denial of plaintiff's rights, the BHE was claimed to have maintained records of various libelous statements about plaintiff, to have slandered plaintiff and encourage unnamed persons to slander her, to have prevented investigations into plaintiff's grievances by rearranging files and by barring access to records, to have bribed and threatened employees to cause them to withhold favorable testimony about plaintiff, and to have incited unnamed militants, drug addicts and criminals to "retaliate" against plaintiff in unspecified ways. See 423 F. supp. at 709.

In the second action, 75 Civil 3840 expanded to include federal officials, Ms. Morpurgo reiterated many of the charges against the BHE presented in her first complaint and further claimed that the BHE and CUNY employees had falsified her examination scores and academic evaluations in order to effect her dismissal from the doctoral program at CUNY. In this complaint, however plaintiff alleged that these actions were mandated by confidential

directives issued by unspecified federal agencies and were in furtherance of a vast conspiracy to deprive her of her civil rights. The municipal defendants were charged with participation in a similarly widespread cover-up conspiracy to prevent plaintiff from discovering the truth about the circumstances surrounding the BHE's actions. See 423 F. Supp. at 709.

In her third complaint, 75 Civil 4913, expanded to include, among others, her union representatives and her attorneys, plaintiff again charged the municipal defendants with participation in a conspiracy and a cover-up conspiracy. QCC's decision in 1972 not to rehire plaintiff as an adjunct lecturer in philosophy was claimed to have been taken in furtherance of the conspiracy and to have been discriminatory. BHE was apparently alleged to have engineered this decision and was charged with intimidating and misleading persons who might have supported plaintiff in her efforts to be reinstated or hired elsewhere. Plaintiff also claimed that the BHE, without her permission, exchanged confidential information about her with the law firm that represented her in connection with an EEOC complaint filed after her dismissal from QCC. See 423 F. Supp. at 709.

The municipal defendants moved for dismissal of the complaints against them on the ground that, inter alia, the complaints failed to state a claim upon which relief could be granted.

In his opinion, dated November 18, 1976, Judge Weinfeld, after noting that he had previously dismissed plaintiff's original complaint and first amended complaint for failure to allege facts that would entitle her to relief against the municipal defendants, held that these deficiencies had not been corrected in the second amended complaint insofar as claims based upon alleged violations of Title VII of the Civil Rights Act, 42 U.S.C. §1983, and 42 U.S.C. 1985 (3). See 423 F. Supp. 704, 711. However, Judge Weinfeld found that "plaintiff's complaints in 75 Civil 3840 and 75 Civil 4913 do allege with sufficient particularity that certain named employees of BHE and of CUNY violated plaintiff's right to due process in connection with the decisions not to renew her teaching contract and not to allow her to continue in the CUNY program." See 443 F. Supp. at 712.

As to that portion of plaintiff complaint which Judge Weinfeld had not dismissed, the BHE moved for summary judgment on the ground that the nature of Ms. Morpurgo's non-tenured employment is not within the protection of the due process clause and further that all due process requirements in connection with the decision to terminate her doctoral candidacy had been satisfied.

In his opinion, dated July 26, 1977 Judge Weinfeld granted the municipal defendants' motion.

Facts

(1)

The documents submitted on motions to dismiss and for summary judgment show the following facts relevant to the termination of Ms. Morpurgo's matriculation in the doctoral program at CUNY.

In September, 1967 Ms. Morpurgo commenced study as a doctoral candidate in philosophy at CUNY (Plaintiff's 9G Statement, ¶19). The applicable curriculum and course requirements, as set forth in the 1967-1968 Catalogue of the Graduate Center, required plaintiff to pass a written qualifying examination and a four part comprehensive examination (Plaintiff's 9G statement, ¶19; Exhibit F attached to Municipal Defendants' 9G Statement). The 1969-70 catalogue modified the sequence of exams by eliminating the qualifying examination and redesignating the four part comprehensive with the added requirement that no part of the exam be taken and failed more than twice (Plaintiff's 9G Statement, ¶21; Exhibit G attached to Municipal Defendants' 9G Statement). The 1970-71 catalogue eliminated the two attempt limitation (Exhibit H attached to Municipal Defendants' 9G Statement). Ms. Morpurgo made a total of eleven attempts to pass the four parts of the comprehensive examinations, as follows (Exhibit O attached to Municipal Defendants' 9G Statement):

- a) Ethics-three attempts-no pass,
- b) History-four attempts-pass,
- c) Epistemology-one attempt-pass,

d) Logic-three attempts-no pass.

The Evaluation Committee of the Philosophy Department reviews the performance of doctoral candidates at the end of each academic year. Their decisions are reviewed by the Executive Committee of the Department (Plaintiff's 9G Statement, ¶¶25,26).

In the Spring of 1972, after reviewing Ms. Morpurgo's performance, the Evaluation Committee determined that plaintiff should leave the doctoral program. At plaintiff's request, she was given another opportunity to remain in the program as a precondition to which she was required to pass two of the comprehensive examinations in September, 1972 (Plaintiff's 9G Statement, ¶¶28, 29; Exhibit J attached to Municipal Defendants' 9G Statement). Plaintiff failed one of those two exams (Plaintiff's 9G Statement, ¶30). As a result, in February, 1973 the Executive Committee confirmed the Evaluation Committee's recommendation to terminate plaintiff's matriculation (Plaintiff's 9G Statement).

CUNY's Philosophy Department has an anonymous grading system. The Evaluation Committee, at the time it reviewed plaintiff's academic record, was unaware of plaintiff's identity (Plaintiff's 9G Statement, ¶¶32, 33; Exhibit O).

On May 1, 1973 the plaintiff challenged the impartiality of the Evaluation Committee and contested the examinations that she failed in 1972 (Exhibit L attached to Municipal Defendants' 9G Statement). After reviewing

the matter, the Executive Committee denied that part of Ms. Morpurgo's appeal relating to the exams she failed in January, 1972 and deferred the matter of alleged bias until the Fall, 1973 (Plaintiff's 9G Statement, ¶35; Exhibit L attached to Municipal Defendants' 9G Statement).

In February, 1974, the Dean of the Graduate School appointed an ad hoc committee to prepare a report clarifying the entire matter and eliciting a statement of facts from plaintiff (Plaintiff's 9G Statement, ¶36; Exhibit M attached to Defendant's 9G Statement). On March 12, 1974, the Dean of the Graduate School notified Ms. Morpurgo that he had denied her claims of bias in the exam procedures (Plaintiff's 9G Statement, ¶38; Exhibit O attached to Defendant's 9G Statement).

Thereupon, plaintiff attacked the review proceeding afforded her by BHE in the New York State courts pursuant to CPLR Article 78, specifically challenging the notice requirements provided in the college bulletin. The State Court dismissed Ms. Morpurgo's claim entirely and held that the decision to terminate her matriculation was not arbitrary or capricious. See Matter of Morpurgo v. Board of Higher Education, et al., Supreme Court, New York County (CALLAHAN, J.), Index No. 10601/74, December, 1974.

(2)

The documents submitted on motions to dismiss and for summary judgment show the following facts relevant

to the municipal defendant's refusal to renew plaintiff's contract as an adjunct lecturer:

Ms. Morpurgo was employed as an adjunct lecturer in philosophy in the Social Science Department of Queensborough Community College for the Spring 1970 term until June 1972 (Plaintiff's 9G Statement, ¶1; Exhibit A attached to Municipal Defendant's 9G Statement).

On March 23, 1972, plaintiff's teaching was observed by Dr. C.S. Hong who concluded in a report, dated April 6, 1972, that "the lesson observed was not satisfactory" (Plaintiff's 9G Statement, ¶2; Exhibit A attached to Municipal Defendant's 9G Statement). On April 11, 1972, Dr. Evelyn Peterson of the Social Science Department also observed one of plaintiff's lectures and also reported that the lesson was not satisfactory (Plaintiff's 9G Statement, ¶3; Exhibit B attached to Municipal Defendant's 9G Statement).

On April 13, 1972, the Personnel and Budget Committee of the Department voted not to recommend reappointment of Ms. Morpurgo for the Fall 1972 academic year (Exhibit E-2 attached to Municipal Defendant's 9G Statement).

The terms of plaintiff's employment as an adjunct lecturer are set forth in the Agreement between BHE and the United Federation of College Teachers, October 1969-1972 ("Agreement"), Education Law §6202 and the Bylaws of the Board of Education §6.5 (Plaintiff's 9G Statement, ¶7; Exhibit D attached to Municipal Defendant's 9G Statement).

Ms. Morpurgo commenced a grievance alleging violation of the Agreement in the termination of her services as an adjunct lecturer. A Step I grievance meeting was held on May 9, 1972 at which time it was found that the Agreement had not been violated. Nevertheless, the matter was sent back to the Personnel and Budget Committee to reconsider its action in light of the material submitted by Ms. Morpurgo, namely transcripts of tapes taken of her lectures, examination results and student evaluation on forms which she had developed and given to her students (Plaintiff's 9G Statement ¶¶ 8, 9; Exhibit E-2 attached to Municipal Defendants' 9G Statement). On July 11, 1972, plaintiff was informed that the decision of the Personnel and Budget Committee would stand. No reasons were given for the non-renewal of Ms. Morpurgo's employment nor was information regarding that decision given to prospective employers (Plaintiff's 9G Statement, ¶¶ 11, 12, 13).

The grievance proceeding referred to above was denied by an arbitrator on August 27, 1973. No other administrative proceeding was held with respect to this matter (Plaintiff's 9G Statement, ¶¶ 15, 16; Exhibit E attached to Municipal Defendants' 9G Statement).

POINT I

THE DISTRICT COURT PROPERLY DISMISSED PLAINTIFF'S CLAIMS UNDER TITLE VII OF THE CIVIL RIGHTS ACT, 42 U.S.C. §1983 AND 42 U.S.C. §1985(3) FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that a claim for relief contain a short and plain statement of the claim showing that the pleader is entitled to relief. While it is true that pro se pleadings are to be read with an understanding tolerance, even a pro se plaintiff may not repeatedly ignore the requirements of the Rule. See Place v. Shepherd, 446 F. 2d 1239, 1244, 1246 (6th Cir., 1971).

In the case at bar plaintiff's complaints against the BHE and other municipal defendants are, at best, muddled, vague and conclusory. They merely set forth brief, unsupported contentions that the failure to rehire her as an adjunct lecturer was an act of racial, religious, sexual or nationality-based discrimination. In dismissing plaintiff's Title VII claim, Judge Weinfeld pointed out (423 F. Supp. at 711):

"Given repeated opportunities to replead, plaintiff has failed to provide any factual allegations reasonably indicating that the BHE or its employees discriminated against her on the basis of any of these characteristics. Indeed, plaintiff's complaints not only fail to specify how or why the BHE's actions were discriminatory, but one cannot discern of what race, sex, religion or national origin plaintiff claims to be. At various points in her complaints she asserts that she is 'of ambiguous race,

religion, sex, national origin, or political affiliation'; that she is 'female,' protestant/scientific skeptic," and 'sepharadic/integrated'; and that she is 'integrated, free-thinker, nonethnic and unisex.'"

Clearly, faced with such a confusing, unsupported complaint which fails even to identify the basis for the purported discrimination, the District Court properly dismissed the claim. See, e.g., Serzysko v. Chase Manhattan Bank, 461 F. 2d 699, 703 and n. 3 (2d Cir.), cert. denied 409 U.S. 883 (1972); Marshall v. Electric Hose & Rubber Co., 65 F.R.D. 599, 603-06 (D.Del. 1974); cf. Scott v. University of Delaware, 385 F. Supp. 937, 943-45 (D. Del. 1974).

Plaintiff's conclusory allegations also fail to set forth a claim against the municipal defendants pursuant to the conspiracy provisions of 42 U.S.C. §1985(3). As indicated above, Ms. Morpurgo claims that she is "of ambiguous race, religion, ethnic origin, and sex" and fails to allege, with any particularity, facts that could give rise to a reasonable interference of a conspiracy. See Powell v. Workmen's Compensation Board, 327 F. 2d 131, 137 (2d Cir., 1964); Koch v. Yunich, 533 F. 2d 80, 85 (2d Cir., 1976); Fine v. City of New York, 529 F. 2d 70, 74 (2d Cir., 1975); Powell v. Jarvis, 460 F. 2d 551, 553 (2d Cir., 1972).

In Griffin v. Beckenridge, 403 U.S. 88, 101-102 (1971), the Supreme Court stated:

"That the statute [§1985] was meant to reach private action does not, however,

mean that it was intended to apply to all tortious, conspiratorial interferences with the rights of others ... The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action. The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all. " (Footnotes omitted.) (Matter in brackets supplied).

See also Furumoto v. Lyman, 362 F. Supp. 1267, 1286 (N.D. Cal., 1973). Assuming, arguendo, that Ms. Morpurgo was the subject of discrimination, it is apparently her position that such discrimination was directed against her as an individual and not as a member of any constitutionally protected class to which §1985(3) applies. See Kletschka v. Driver, 411 F. 2d 436, 447 (2d Cir., 1969). Clearly, the District Court properly determined that plaintiff had failed to state a claim under this provision.

The same defect destroys any possible claim under 42 U.S.C. §1983. Plaintiff has attempted to allege a direct deprivation of constitutional rights by the municipal defendants. But, again, she has done so in only vague and conclusory terms. As pointed out by Judge Weinfeld (423 F. Supp. at 711):

"Giving to most liberal interpretation of plaintiff's claims, however, it is apparent that no cause of action under section 1983 based on discrimination has been alleged. Although plaintiff does claim that she was discriminated against when she was not rehired at QCC and when she was dropped from the CUNY doctoral program, she again

sets forth only a hodgepodge of vague and conclusory allegations and provides no facts to indicate that these actions were the product of any motive or policy to discriminate against her on the grounds of her race, religion, nationality or sex, or because of her membership in any class whose interests are cognizable under section 1983. Moreover, with one exception plaintiff's complaints do not sufficiently allege deprivation of any other constitutional rights and, in any event, fail to specify the persons whose acts are claimed to have harmed plaintiff."

Moreover, under this Court's decision in Monell v. Department of Social Services, 532 F. 2d 259, 263-64 (1976), cert. granted 429 U.S. 1071 (1977), the BHE is not a "person" within the meaning of section 1983 and therefore cannot be sued under that provision of the Civil Rights Act.

POINT II

PLAINTIFF AS A DOCTORAL CANDIDATE, WAS GIVEN NOTICE OF AND A FAIR OPPORTUNITY TO SATISFY MATRICULATION REQUIREMENTS. TERMINATION OF HER MATRICULATION FOR FAILURE TO SATISFY THOSE REQUIREMENTS IS NOT A VIOLATION OF DUE PROCESS.

Several courts have considered the nature of a graduate student's interest in education and the applicable procedural safeguards.

In Gaspar v. Bruton, supra, 513 F. 2d 843 (10th Cir., 1975), a nursing student challenged her academic dismissal from a public vocational-technical school. Prior to dismissal, the plaintiff was notified of her failure to complete clinical training requirements as set forth in the school's manual, put on probation, afforded an

opportunity for consultation with faculty, and ultimately given an opportunity to meet with the Superintendent of the School Board on the subject of her academic termination.

The Court noted at page 851:

"[c]ourts have historically refrained from interfering with the authority vested in school officials to drop a student from the rolls for failure to attain or maintain prescribed scholastic ratings (whether judged by objective and/or subjective standards), absent a clear showing that the officials have acted arbitrarily or have abused the discretionary authority vested in them. 39 A.L.R. 1019; Foley v. Benedict et al., 122 Tex. 193, 55 S.W. 2d 805 (1932); Anno. 86 86 A.L.R. 484; 513 F.2d, at 850...

We hold that school authorities, in order to satisfy Due Process prior to termination or suspension of a student for deficiencies in meeting minimum academic performance, need only advise that student with respect to such deficiencies in any form. All that is required is that the student be made aware prior to termination of his failure or impending failure to meet those standards."

In the case at bar, a State Court has determined that the plaintiff was made aware of and afforded an additional opportunity to meet applicable matriculation standards and was terminated only after she failed to pass required examinations. In fact, plaintiff was given greater opportunities to pass than any other doctoral student. Accordingly, the Gaspar standard has been more than satisfied.

In Connelly v. University of Vermont and State Agricultural College, 244 F. Supp. 156, 161 (D.C. Vt., 1965), the Court held:

"Whether the plaintiff should or should not have received a passing grade for the period in question is a matter wholly within the discretion of school authorities who alone are qualified to make such a determination."

Similarly, in Mahavongsanan v. Hall, 529 F. 2d 488, (5th Cir., 1976), a graduate student claimed that the University's refusal to award her a master's degree was arbitrary and capricious. There, the plaintiff received notice of the prospective application of modified comprehensive examination requirements for the degree and afforded two opportunities to pass the comprehensive examinations as well as course alternatives in lieu of the comprehensive examinations. The Court found no actionable conduct by the University and noted that an academic, as distinguished from a disciplinary, dismissal did not require a plenary hearing.

"A hearing may be required to determine charges of misconduct, but a hearing may be useless or harmful in finding out the truth concerning scholarship. There is a clear dichotomy between a student's due process rights in disciplinary dismissals and in academic dismissals. Gaspar v. Bruton, 10 Cir. 1975, 1968; 282 Ala. 358; 211 So. 2d 489; cert. denied 1968; 393 U.S. 936. Militona v. University of Miami, Fla., App. 1970; 236 So. 2d 162; cert. denied 1971, 401 U.S. 962." 529 F. 2d at 450.

In upholding the University's action, the Mahavongsanan Court specifically found that the several

opportunities afforded plaintiff to satisfy the course requirements precluded the charge of arbitrary or capricious treatment of plaintiff. The plaintiff in the case at bar was offered several opportunities to satisfy the doctoral degree requirements and the State Court found termination under such circumstances entirely supportable. Accord Connelly v. University of Vermont, State Agricultural College, supra 244 F. Supp. 156 (D.C. Vt. 1965).

The decisions of the courts of the State of New York parallel these federal holdings. In reviewing the relationship between a college and a student, the New York Courts have concluded that a college which has enrolled a student must act in a fair manner and cannot arbitrarily expel a student if the student complies with terms prescribed by the college. When a university acts based on facts within its knowledge which justify the exercise of discretion, a court may not review the exercise of the university's discretion. Matter of Carr v. St. John's University, 17 A.D. 2d 632, aff'd, 12 N.Y. 2d 802. See also James v. Board of Education, 42 NY 2d 357 (1977). That standard, which is in effect the due process standard, was applied by the State Court in dismissing plaintiff's Article 78 proceedings.

Based upon the foregoing premises, it is clear that the applicable notice and fair academic review standard was satisfied in connection with the decision to terminate plaintiff's matriculation in the doctoral program. The claim

for relief is entirely without merit and the motion for summary judgment was properly granted.

POINT III

THE BOARD OF HIGHER EDUCATION'S REFUSAL TO RENEW PLAINTIFF'S NON-TENURED EMPLOYMENT AS AN ADJUNCT LECTURER DOES NOT VIOLATE DUE PROCESS PRINCIPLES.

Plaintiff, as an adjunct lecturer, was a nontenured employee when the decision not to rehire her for an additional school term was reached. See New York Education Law §6206 (McKinney 1972); see also By-laws of the Board of Higher Education §6.5.

The United States Supreme Court in ruling on the nature of an individual's interest in non-tenured employment has held that procedural due process applies only when the interest in continued employment lies within the ambit of the Fourteenth Amendment's protection of liberty and property. Board of Regents v. Roth, 408 U.S. 593, (1972) and Perry v. Sindermann, 408 U.S. 600, (1972). In upholding a determination not to renew the contract of a non-tenured State University professor which was made without hearing and without explanation, the Supreme Court in Roth held that "property" is not merely a matter of personal expectation, but rather emanates from statute or contract. See also Russell v. Hodges, 470 F. 2d 212 (2d Cir., 1972); Canty v. Board of Education, 470 F. 2d 111 (2d Cir., 1972). Under the terms of Ms. Morpurgo's employment, her one year contract could expire at the end of the semester in the

discretion of the employer. The State Education Law as well as the BHE By-laws preclude any claim of expectancy or entitlement to continued employment. Based on these facts, there is no property right involved in the determination not to renew plaintiff's contract and, therefore, due process of law has not been abridged. Virtually identical action was approved by the Supreme Court in Roth, 408 U.S. at 578.

The Court in Roth additionally observed that even in the instance where an employee's interest in employment would be insufficient to warrant a hearing, there might be cases "in which a State refused to re-employ a person under circumstances that interests in liberty would be implicated" requiring that reasons and a hearing be given, 408 U.S. at pp. 572-573. In finding that the Roth case was not such an instance, the Court stated (408 U.S. at p. 573):

"The State, in declining to rehire the respondent, did not make any charge against him that might seriously damage his standing and associations in his community. It did not base the non-renewal of his contract on a charge, for example, that he had been guilty of dishonesty, or immorality. Had it done so, this would be a different case. For 'where a person's good reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.' (citing cases). In such a case, due process would afford an opportunity to refute the charges before university officials. In the present case, however, there is no suggestion whatsoever that the respondent's interest in his

'good name, reputation, honor or integrity' is at stake. Similarly, there is no suggestion that the State, in declining to re-employ the respondent, imposed on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities."

Moreover, the Court rejected the premise of the Court of Appeals (409 U.S. p. 573 pr. 13) that the "substantial adverse effect non-retention is likely to have upon career interests of an individual professor amounts to a limitation on future employment sufficient to involve procedural due process guarantees":

"There is no suggestion of how non-retention might affect the respondent's future employment prospects. Mere proof, for example, that his record in one job, taken alone might make him somewhat less attractive to some other employers would hardly establish the kind of foreclosure of opportunities amounting to a deprivation of liberty."

Here, as in Roth, defendant merely exercised its right not to renew plaintiff's contract upon its annual expiration. No charges were preferred against plaintiff nor was her reputation impeached by governmental action. Reasons for the non-renewal were not made known to plaintiff nor to prospective employers. There is clearly no publication injury here, as was found in Velger v. Cawley, 525 F. 2d 334 (2d Cir. 1975), reversed 429 U.S. 624, 627 (1977) or Huntley v. Community School Board New York School District 14, etc., 543 F. 2d 979 (2d Circ., 1976), cert. den. ____ U.S. ____, 51 L. Ed. 773 (1977). Thus, there is no violation

of a liberty interest secured by the Fourteenth Amendment.
Clearly the municipal defendants' motion for summary judgment
was properly granted.

CONCLUSION

THE JUDGMENT OF THE DISTRICT COURT
SHOULD BE AFFIRMED.

January 16, 1978

Respectfully submitted,

ALLEN G. SCHWARTZ,
Corporation Counsel,
Attorney for Municipal
Defendants-Appellees.

AFFIDAVIT OF SERVICE ON ~~ATTORNEY~~ BY MAIL

State of New York, County of New York, ss.:

BRUCE GARNER

being duly sworn, says that on the 13 day of JAN., 1978, he served the annexed BRIEF upon

ANNA S. V. MORFUGO Esq., the attorney for the PLTE-ASST PRO-SE

herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said ~~attorney~~ at No. Box 1091 in the

~~Borough of~~ SAG HARBOR, City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this

13 day of JAN., 1978

ROBERT A. FERRETTE
NOTARY PUBLIC, STATE OF NEW YORK

No. 41-4325902

Commission Expires March 30, 1979

Form 323-60M-1126054(77) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

BRUCE GARNER

being duly sworn, says that on the 13 day of JAN., 1978, he served the annexed BRIEF upon

ROBT. B. FISKE, JR. Esq., the attorney for the DEPS-APPLES (USA, SPKBE, (LEV), etc)

herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 1 ST. ANDREWS PLACE in the Borough of MANH., City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this

13 day of JAN., 1978

NOTARY PUBLIC, STATE OF NEW YORK

Form 323-60M-1126054(77) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

BRUCE GARNER being duly sworn, says that on the 13 day of JANU 1978 he served the annexed BRIEF upon RICHARD DESMOND (WEIN, LANE & Co.) Esq., the attorney for the DEFT-APPLE (M.I.T.) herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 60 E. 42ND ST in the Borough of MANH, City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this

13 day of JANU 1978

ROBERT A. FERRETTE
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-425902
Qualified in Queens County
Commission Expires March 30, 1979

[Signature]

Form 323-60M-1126054(77) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

BRUCE GARNER being duly sworn, says that on the 13 day of JANU 1978, he served the annexed BRIEF upon MICHAEL C. MCGOWINS Esq., the attorney for the DEFTS-APPLES (STERN, HOLT, etc.) herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 2401 E. ST. N.W. in the ~~Borough of~~ WASHINGTON, D.C. ~~City of New York~~ being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this

13 day of JANU 1978

ROBERT A. FERRETTE
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-425902
Qualified in Queens County
Commission Expires March 30, 1979

[Signature]

Form 323-60M-1126054(77) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

BRUCE GARNER being duly sworn, says that on the 13 day of JAN. 1978, he served the annexed BRIEF upon R.S. HERZOG (JACKSON, NASH, etc.) Esq., the attorney for the DEFT-APPEE (PRINCETON UNIV.) herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 330 MADISON AVE. in the Borough of MANH., City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this

13 day of JAN. 1978

ROBERT A. FERRETTE
NOTARY PUBLIC, STATE OF NEW YORK

No. 41-4-10902

Qualified in Queens County

Commission Expires March 30, 1978

Form 323-60M-1126054(77) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

BRUCE GARNER being duly sworn, says that on the 13 day of JAN. 1978, he served the annexed BRIEF upon E.L. SMITH (A. M. LANZONE & ASSOC.) Esq., the attorney for the DEFTS-APPEES (VLADICK, ELIAS, etc.) herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 26 B'WAY in the Borough of MANH., City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this

13 day of JAN. 1978

ROBERT A. FERRETTE
NOTARY PUBLIC, STATE OF NEW YORK

No. 41-4-10902

Qualified in Queens County

Commission Expires March 30, 1978

Form 323-60M-1126054(77) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

BRUCE GARNER

being duly sworn, says that on the 13 day

of JAN. 1978, he served the annexed BRIEF upon

STURM & PERL Esq., the attorney for the DEPT. APPLE (PROFESSIONAL STAFF, etc.)

herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 21 E. 40th ST. in the Borough of MADISON, City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this

13 day of JAN. 1978

[Signature]

Form 323-60M-1126054(77) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

BRUCE GARNER

being duly sworn, says that on the 13 day

of JAN. 1978, he served the annexed BRIEF upon

M. MURKASEY (PATTERSON, BELMONT, etc.) Esq., the attorney for the DEPT. APPLE (M. MOTHERSILL)

herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 30 ROCKEFELLER PLAZA in the Borough of MADISON, City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this

13 day of JAN. 1978

[Signature]

Form 323-60M-1126054(77) 346